upa

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1007 OF 2005
IN
NOTICE OF MOTION NO.766 OF 2003
IN
CHAMBER SUMMONS NO.998 OF 2002
IN
SUIT NO.434 OF 1996

Ms.Sophy Kelly).. Plaintiff

Versus

Tejraj Ghamandiram Gowani and others).. Defendants

And

Ms.Marcelle Bonchek).. Applicant

Mr.T.G. Vora i/b.Mr.Bharat Joshi for the Applicant.

None present for the Plaintiff.

Mr.P.Kabadi i/b.Doijode Associates for Defendant No.4.

CORAM : SMT. NISHITA MHATRE, J.

DATED : 3RD JULY 2006

P.C.:

. The present Motion has been taken out for setting aside the order dated 4th March 2005 dismissing Notice of Motion No.766 of 2003. That Notice of Motion appears to be dismissed since the Advocate appearing for the Applicant was not present.

2. An explanation is given in the affidavit in support of the present Motion for the absence of the

Advocate. It is stated that the Vakalatnama of the Advocate was filed only on 7th March 2005, whereas the matter appeared on board on 4th March 2005. A statement has been made that the earlier Advocate had granted no objection for the appearance of the present Advocate on behalf of the Applicant. The Applicant is not a resident of India.

3. Although, there is no proper justification given in the affidavit in support of the Motion, in my view, the Applicant needs to be given one opportunity to have Notice of Motion No.766 of 2003 heard on merits.

4. Notice of Motion allowed in terms of prayer clause (a) subject to payment of costs of Rs.2,000/- (Rupees Two Thousand only) to Maharashtra State Legal Services Authroity.

5. Notice of Motion No.766 of 2003 restored to file. To be placed on board on Monday, the 10th July 2006.